

# **EXHIBIT A**

## VICE NEWS

# Trump Blacklisted This Chinese Company. Now It's Making Coronavirus Masks for U.S. Hospitals.

China's BYD got special FDA approval to import respirators for medical use despite a history of problems in the U.S.

DN By Daniel Newhauser

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WASHINGTON — With nurses and doctors desperate for respirator masks during the coronavirus outbreak, the Food and Drug Administration rolled out an emergency approval process for China-based suppliers last week, aiming to let quality products in and keep fraudulent ones out.

But the first company the FDA approved has been prohibited by law from bidding for some federal contracts in the United States. Although the company, BYD, is a major global player in the electric vehicle and lithium battery markets, it also has glaring red flags on its record, experts warn, including a history of supplying allegedly faulty products to the U.S., ties to the Chinese military and Communist Party, and possible links to forced labor.

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BYD also has no history of making personal protective equipment, and yet days after the FDA approval, it secured a \$1 billion deal to supply masks to California.

The findings by VICE News cast major doubt on the ability of federal and state governments to police the rapidly growing and chaotic Chinese market for respirators at a critical moment when masks are in short supply because U.S. manufacturers have been unable to meet demand.

Until two months ago, a BYD subsidiary, BYD Precision Manufacture Company Ltd., specialized in making electronic components, including hardware for Apple's iPhones. Responding to a global shortage of personal protective equipment, BYD — an acronym for Build Your Dreams — repurposed its facility in Shenzhen into the world's largest mask manufacturing plant last month.

The BYD offshoot, which is owned by a holding company incorporated in the British Virgin Islands, registered with the Chinese government on February 7 to begin "production and sales of medical equipment and industrial protective equipment," according to Chinese corporate records.

On April 3, the same day the FDA announced its emergency authorization, the agency gave the BYD subsidiary the first-ever approval to import KN95 masks to the United States for use in healthcare settings. KN95s are the Chinese equivalent to the N95, the most trusted safeguard against contracting the coronavirus through breathing. But until now the FDA had refused to approve them because of quality concerns.

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masks to the United States for use in healthcare settings. KN95s are the Chinese equivalent to the N95, the most trusted safeguard against contracting the coronavirus through breathing. But until now the FDA had refused to approve them because of quality concerns.

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Experts who've kept an eye on BYD for years warn that customers and the federal government should beware. Rep. John Garamendi, a California Democrat, helped draft legislation late last year that bans federal funds from being used to buy BYD electric buses effective immediately in Washington, D.C., and starting in 2022 for the rest of the country. President Donald Trump signed the ban into law in December as part of a defense authorization bill.

BYD has blasted the ban as lawmakers pandering to "a special interest misinformation campaign to squash competition in the electric bus sector."

Garamendi wasn't aware BYD had been granted special FDA approval to import masks until VICE News told him during an interview on Thursday.

**"They may very well flood the market with substandard devices."**

"What the hell? What is our government doing?" he said. "They may very well flood the market with substandard devices and people will be relying on them as though they are of satisfactory quality, and that is bizarre."



A HEALTH CARE WORKER AT ALAMEDA HOSPITAL WEARS A PROTECTIVE MASK WITH A MESSAGE DURING A PROTEST OUTSIDE OF THE HOSPITAL ON APRIL 07, 2020 IN ALAMEDA, CALIFORNIA. (PHOTO BY JUSTIN SULLIVAN/GETTY IMAGES)

This week, California Gov. Gavin Newsom announced a \$1 billion deal to contract with BYD North America to deliver 150 million respirator masks and another 50 million surgical masks per month to the state, calling it a "big bold bet." The company's U.S.-based subsidiary has a factory in Lancaster, California, where electric buses are assembled with parts manufactured in the U.S. and China, and where BYD has already donated thousands of masks to a local hospital.

In an appearance Wednesday on Rachel Maddow's MSNBC show, Newsom didn't mention BYD by name, but he described the company as "a manufacturer here in the state of California." He then clarified under questioning that the masks will "be manufactured overseas" by "a large manufacturer with appropriate contacts in Asia." Newsom has said he may want to act as a supplier for other Western states.

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State lawmakers are already probing the deal. The chair of the state Senate budget committee sent a letter to the Newsom administration on Thursday questioning the cost and whether the masks will meet FDA standards.

Newsom said “the vast majority” of the masks will be of the N95 variety, but it’s unclear whether BYD will supply that type of respirator, or its own KN95s. Soon after the FDA cleared the way for imports of KN95s, California also relaxed its standards, noting KN95 masks “may be an acceptable alternative” due to the supply shortage, the state’s Department of Health records show.

Brian Ferguson, a spokesperson for the Governor’s Office of Emergency Services, declined to answer whether the state’s BYD masks will be N95s or KN95s, whether the FDA’s emergency authorization had anything to do with the state’s decision to contract with BYD, or whether the governor was aware of the company’s track record.

## Flawed products

But BYD has previously been accused of delivering shoddy products to American taxpayers, including Californians. The city of Los Angeles contracted with BYD for \$330 million worth of battery-powered buses, forklifts, and trucks, but a 2018 investigation by the Los Angeles Times found that the buses stalled on hills and were plagued by mechanical problems. Despite the issues, the Times found BYD kept getting government contracts because its “business model involves hiring lobbyists and grant writers to secure no-bid purchases by public agencies.” In February, Los Angeles ordered 134 more BYD buses.

BYD executives said at the time that the company received overwhelmingly positive feedback about its buses from transit districts, and suggested critics were overstating problems with the company’s technology. “If you want to find the problem for the new technology, you always can try to,” Stella Li, president of U.S.-based BYD Motors Inc., told the Los Angeles Times. “If you want success, everything is positive.”

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In January 2019, the city of Albuquerque sued BYD after sending back a fleet of more than a dozen 60-foot electric buses that were allegedly riddled with defects, including brakes that didn’t work and parts that were cracked, rusted or improperly installed. The city claimed the BYD buses, which cost \$133 million, “were not safe,” citing issues such as “rear doors opening while the buses were in motion” and batteries that could go up in flames “with little possibility of putting out the fire.” The lawsuit was settled last May with an agreement that BYD wouldn’t compensate the city, admit fault, or counter-sue.







Scott Boos, an executive at the nonprofit Alliance for American Manufacturing, told VICE News “if their masks are anything like their transit buses,” it won’t be a good situation for people in the U.S. who need protection against the coronavirus.

“There’s no doubt that we should do whatever it takes right now to save lives in this moment,” Boos said. “But as we get beyond this crisis, we shouldn’t rely on these folks for essential needs. It’s just a bad idea.”

Requests for comment sent to two U.S.-based BYD spokespeople and a U.S.-based lawyer who represents BYD Precision Manufacture were not returned. Messages left with a Hong Kong-based PR firm and a company representative in Europe were also unreturned.

Analysts who study Chinese companies found several red flags with BYD’s owners and the company’s subsidiaries that may give consumers pause.

**Do you have information about BYD or the U.S. PPE supply chain? We’d love to hear from you. Contact the writers at [daniel.neuhauser@vice.com](mailto:daniel.neuhauser@vice.com) or [keegan.hamilton@vice.com](mailto:keegan.hamilton@vice.com).**

Corporate records show that BYD Precision Manufacture’s parent company, BYD Company Ltd., has previously been hit with “administrative penalties” in China. Specifically, Shanghai BYD Co., Ltd., a separate subsidiary that makes batteries, was fined for “medical treatment activities” and “clinical activities” not covered by their formal business registrations in 2018.

BYD’s two main shareholders, Chairman Wang Chuanfu and Vice-Chairman Lu Xiangyang, are cousins and both billionaires among the richest individuals in China, owing to their holdings in BYD, according to Forbes.

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Logan Pauley, a China analyst at the Center for Advanced Defense Studies, found both men “have significant risks associated with them, including multiple court cases and contract disputes.” Wang has served as the legal representative for companies that have been the subject of multiple labor disputes, contract disputes, and patent disputes.

None of that has stopped major international investors from placing bets on the company. Warren Buffett’s Berkshire Hathaway bought 25% of the automaker’s Hong Kong-traded stock in 2008, and Buffett remains a major player in the company. In November, BYD announced a partnership with Toyota to develop a new line of battery-powered vehicles and is in talks with Audi to outfit their new line of cars with lithium-ion batteries. The Scottish city of Glasgow has a fleet of BYD buses on its streets as of last year.

### Human-rights red flags

BYD’s international business has thrived despite troubling allegations of connections to Uighur forced labor in Xinjiang province, where the Chinese government has brutally cracked down on ethnic Uighurs, placing hundreds of thousands of people from the Muslim minority group into “re-education camps.” According to VICE News’ reporting last year, placement in a factory

BYD's international business has thrived despite troubling allegations of connections to Uighur forced labor in Xinjiang province, where the Chinese government has brutally cracked down on ethnic Uighurs, placing hundreds of thousands of people from the Muslim minority group into "re-education camps." According to [VICE News' reporting last year](#), placement in a factory is sometimes the last step in China's "re-education" process for Uighurs.



MEDICAL PERSONNEL ARE SEEN OUTSIDE NYU LANGONE HEALTH HOSPITAL AS PEOPLE APPLAUD TO SHOW THEIR GRATITUDE TO MEDICAL STAFF AND ESSENTIAL WORKERS ON APRIL 4, 2020 IN NEW YORK CITY. (PHOTO BY NOAH GALAZ/GETTY IMAGES)

A report published last month by the Australian Strategic Policy Institute estimated that more than 80,000 Uighurs have been transferred out of Xinjiang to work in factories across China over the past two years, including some who were "sent directly from detention camps." BYD was one of 83 companies identified in the report as using forced Uighur labor in its supply chain, alongside major international brands such as Apple, Nike, and General Motors.

BYD has also been fined for paying Chinese workers below minimum wage to assemble buses in its California plant. BYD has denied allegations of labor abuses, saying its Chinese workers in the U.S. were paid "the equivalent \$2,200 a month, or about \$13.75 an hour, and received free housing." The company has rehabilitated its reputation in the state and has been called a "model employer" by labor advocates.

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Sen. Marco Rubio (R-Fla.) and Rep. Jim McGovern (D-Mass.) introduced legislation last month that would, among other provisions, make corporations importing goods from Xinjiang prove no forced labor was used in the supply chain.

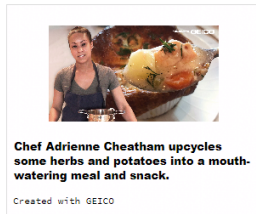
"Any U.S. or international company with operations in Xinjiang or working with the Xinjiang government to source labor to other parts of China should reconsider whether they want to be producing products in a region where there is evidence 'crimes against humanity' are being committed," McGovern said in a statement at the time.

Pauley, of the Center for Advanced Defense Studies, found that Chinese corporate registry information links Lu to at least three companies with operations in Xinjiang. For instance, BYD filings identify Lu as a director of Xinjiang Tianhai Tenghui Technology Holding Co., Ltd., a company that has been designated by Chinese courts as "in serious violation of the law," a blanket designation that suggests it has been reprimanded for abnormal business practices several times. The records show Lu is a major investor in the business, which makes chemical fertilizers. The company could not be reached for comment.

"The FDA didn't vet these companies and allowed ones with, at minimum, considerable existing financial and supply chain risks, and, that at maximum, have contributed to things that could be considered human rights

"The FDA didn't vet these companies and allowed ones with, at minimum, considerable existing financial and supply chain risks, and, that at maximum, have contributed to things that could be considered human rights violations," Pauley said. "It's crazy to me that BYD was approved given how much is on their record."

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Other [Xinjiang tech firms have been sanctioned](#) by the U.S. for alleged human rights abuses, but neither BYD nor Lu's separate Xinjiang based companies are among them. Still, Louisa Greve, director of global advocacy at the Uyghur Human Rights Project, told VICE News that the FDA and other federal agencies should have known about BYD's connection to Xinjiang and the alleged use of forced labor.

"These companies have a major role to play in constructing this total control state in Xinjiang," Greve said. "The U.S. government knows that."

A U.S. government analyst not authorized to speak publicly about the situation said it's possible that even if BYD's mask factory is outside of Xinjiang, it could be using Uighur labor because workers are shipped across the country to areas with high demand for labor. The analyst also warned it would be difficult for U.S. agencies to conduct inspections to verify humane working conditions and ensure quality control.

"I'm not sure how much of a test they'll be able to conduct," the analyst said. "They certainly don't have the resources to inspect every shipment and they have a difficult time accessing and inspecting facilities in China."

The analyst cautioned that it's difficult to say for certain how much control Lu wields over operations in Xinjiang or elsewhere.

"Chinese conglomerates really thrive on having tangled ownership," the analyst said. "It's hard to say who has the power behind the throne. This guy's ownership is significant."

## Pivot to masks

BYD's abrupt switch in business model is not unusual. Thousands of Chinese companies have repurposed their factories to make masks and other types of personal protective equipment for health workers in recent months. China's Ministry of Industry and Information Technology [reported in February](#) that the country had capacity to make more than 20 million masks per day.

BYD's new facility alone was producing 5 million masks per day as of last month, [according to the company](#), and may be producing as many as [15 million per day this month](#). BYD masks are being distributed in [Italy](#), [Japan](#), and elsewhere. By contrast, [3M produces N95s in the U.S.](#) at a rate of 35 million per month, well short of the demand.



## Chinese Drug Traffickers Have a Brand-New Product: Knockoff N95 Masks for Coronavirus

"They're supplying them through the same exact supply chain, through the same exact marketing mechanisms, that they have with illicit drugs for a long time."

Ensuring that the Chinese-made masks meet American quality standards has proved challenging for the U.S. and Chinese governments. VICE News previously reported that illicit drug traffickers have edged into the marketplace, using black market supply chains to source materials and offering fake FDA certifications to interested buyers. Many hospitals have been hesitant to buy this kind of mask, even as their healthcare workers fall ill or die because of the lack of protection.

China tightened controls over its mask exports last month after the Netherlands and other European countries sent back shipments of faulty masks. In response to a critical shortage in the U.S., the FDA created a special process to give approval to masks not usually certified by the U.S. government for use in healthcare settings. The day the policy was announced, the agency released a list of products and manufacturers that met its standards, a process that includes providing independent evidence the respirator is authentic and functional.

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BYD was the first Chinese company to get FDA approval in part due to the efforts of Hanqiang Wang, a San Diego-based regulatory fixer BYD hired to push their application through the red tape.

Reached by VICE News, Wang said he charged the company about \$20,000 to navigate the FDA's new process, \$5,200 of which went toward FDA registration fees. Wang said the process was helped along because BYD also employs its own stable of lawyers and lobbyists, who have for years advocated on the company's behalf on legislative and regulatory issues relating to their other business interests.

"Their primary business is not for medical devices, not for healthcare products. They have opened a new business for this industry, so I think that's what made them find us," Wang said. "We just provided the guidance to BYD and asked them to prepare the documents, because they need a lot of tests for their product performed from third-party labs."



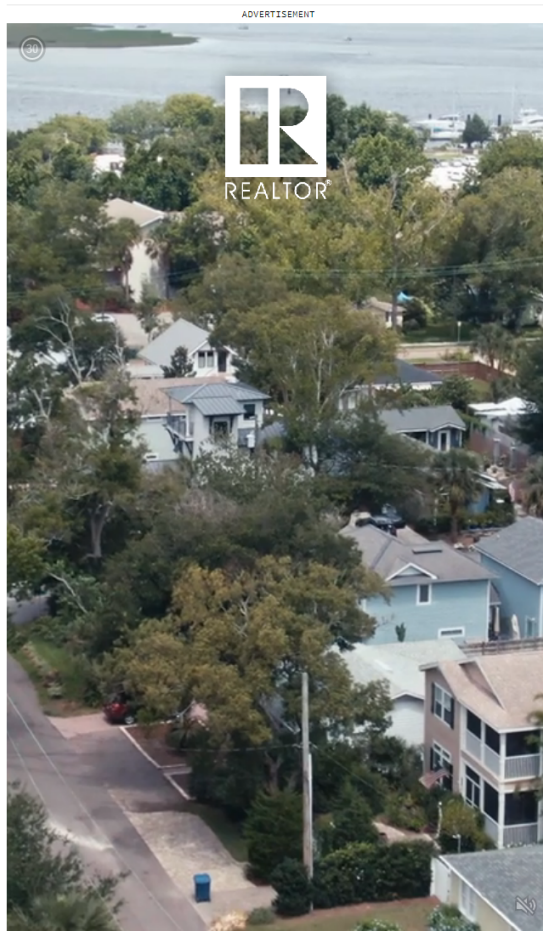
AN ELECTRIC BUS STANDS AT THE BYD COACH AND BUS FACTORY IN LANCASTER, CALIFORNIA, U.S., ON THURSDAY, OCT. 5, 2017. (PHOTO: PATRICK T. FALLON/BLOOMBERG VIA GETTY IMAGES)

BYD has been the most heavily government-subsidized Chinese company in the electric vehicle industry, with more than half of its 2018 profits coming from Chinese government subsidies, according to an analysis by the U.S.-based research organization Radarlock. BYD also has large contracts with



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"We believe BYD is controlled by the Chinese government and quite probably by the People's Liberation Army," Rep. Garamendi said. "Transportation equipment is now very sophisticated, using artificial intelligence and other integrated technologies that rely on communication technology. That technology is available to the Chinese government. That information is available to the Chinese government."



BYD has in the past responded to these allegations by arguing that it is not state-owned, that it is publicly traded, and part-owned by Buffett.

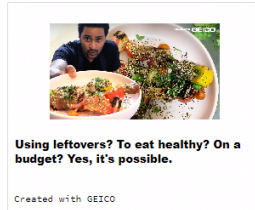
"No one has pointed to any evidence of any wrongdoing by BYD," a company representative told Marketplace last year. "Obviously there's bigger issues going on between China and the U.S., but BYD has come to this country and followed all the rules of the road."

BYD markets its masks at \$4 each, more than double what they sell for in China and more than what unauthorized KN95s go for on the American market. The Chinese government recently cut back on subsidies for electric vehicles, and sales of electric car batteries slumped by 66% since last year with BYD's profits plunging more than 90% in the second half of 2019. The pivot to masks appears to be a shrewd business move, but perhaps also an effort by Beijing to build economic goodwill with the Trump administration, said Nate Picarsic, co-founder of Horizon Advisory, a firm that analyzes the relationship between Chinese government and industry.

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"It's not a coincidence that actor that's taken a little bit of a beating in the U.S. is one of the ones that's positioned as a part of this epidemic relief effort," said Picarsic, who also co-authored the Radarlock research paper on BYD. "The Chinese strategic logic is that some of these state champions can benefit from the PR of contributing through epidemic relief and after the crisis be in a position to sort of cash in that goodwill."

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Hua Chunying, a spokesperson for China's Foreign Ministry, denied in a tweet that China practices "mask propaganda," insisting that the respirator shipments are acts of good will. On Friday, the country further tightened export controls, announcing that masks must undergo customs inspections before leaving factories for overseas destinations. Sellers now need licenses to export medical products. The policies give Beijing even more say over which masks make it out of the country.

The FDA declined to provide the materials BYD submitted to prove the legitimacy of its KN95 masks, but an agency spokesperson said "BYD's submission included information demonstrating that the respirator meets the criteria for authorization."

The submissions have to be done remotely, because like a lot of the country, the FDA is working from home. Inspections of foreign manufacturing facilities have been postponed through April, the FDA spokesperson said, and "inspections outside the U.S. deemed mission-critical will be considered on a case-by-case basis as this outbreak continues to unfold." The agency added that it's using "a robust and multi-pronged approach to overseeing the safety and quality" of masks and other types of protective equipment.

"If we encounter substandard products or receive reports of substandard products, we can take steps to deny entry," the spokesperson said. "Additionally, the FDA is stepping up enforcement at ports of entry, including International Mail Facilities, to ensure fraudulent products that originate outside the country do not enter through our borders."

Since granting BYD the first approval, the FDA has now green-lit more than a dozen other companies to import non-FDA approved masks for health care purposes, including a Taiwan-based manufacturer and another Chinese manufacturer that appears to be a long-established player in the respirator business. U.S. manufacturing giant 3M is also now allowed to import more types of masks. But others are puzzling choices, including one manufacturer an analyst described to VICE News as "some little rinky-dink company" that has virtually no presence online or in Chinese business records.

Some of those companies aren't on the Chinese government's list of manufacturers approved to export masks, raising questions about why the FDA would sanction them as importers. It's clear many new Chinese firms are popping up to meet demand and that they are repurposing existing facilities to quickly ramp up production faster than governments can keep track.

Peter Pitts, a former FDA associate commissioner, said the country is on a "wartime footing," so the FDA needs to be extra sure before it lends a stamp of approval to masks, especially with the lives of doctors, nurses, healthcare workers, and millions of other Americans on the line.

"The first thing the FDA should do is be getting on the phone with their Chinese counterparts to work out some type of a way for the FDA to get people in there," he said. "Desperate times call for desperate measures. The



"The first thing the FDA should do is be getting on the phone with their Chinese counterparts to work out some type of a way for the FDA to get people in there," he said. "Desperate times call for desperate measures. The issue of counterfeit or substandard masks is very real. And those claims can't be trivialized. That being said, the FDA needs to go beyond where it currently is."

Cover: Workers work on the assembly line at a factory of vehicle manufacturer BYD Auto in Xi'an, northwest China's Shaanxi Province, Feb. 25, 2020. (Photo: Xinhua/Liu Xiao via Getty Images)

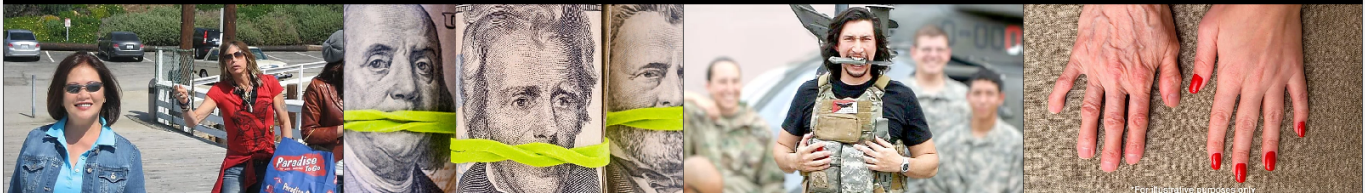
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